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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/907,021	07/17/2001	George L. Markley	DKT 00040	6078

7590 12/14/2004

Borg Warner Inc.
Powertrain Technical Center, Patent Department
3800 Automation Avenue,
Suite 100
Auburn Hills, MI 48326

EXAMINER

MCANULTY, TIMOTHY P

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/907,021

Applicant(s)

MARKLEY ET AL.

Examiner

Timothy P McAnulty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-6,8 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-6,8 and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/24/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 24 September 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. No copy of reference EP 02 25 4886 has been received and, accordingly, the reference has been lined through on the PTO 1449 form.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by Luce.

Luce discloses in figures 1-3 a silent chain comprising a plurality of first link rows comprising one guide link 8 and a number of regular link plates 9,11; a plurality of second link rows comprising one guide link 13 and a same number of regular link plates 10,12 as the number of regular link plates of said plurality of first link rows; a plurality of connection pins 14, each pin extending through and rotatably joining regular link plates and guide plates of each of two successive interleaving link rows; wherein the guide plates of said plurality of first link rows and the guide plates of said plurality of second link rows are of the same shape and size; wherein the regular link plates of said plurality of first link rows and the regular link plates of said plurality of second link rows are the same shape and size; and wherein guide plates of successive interleaving link rows are in staggered relationship along the longitudinal direction of the chain.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1,4-6,8,11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luce in view of Kozakura et al.

Luce discloses in figures 1 and 2, a sprocket and power transmission chain comprising a sprocket engaging a transmission chain, said sprocket having a plurality of series of teeth 3,4 wherein teeth of axially adjacent series are circumferentially offset from each other and a transmission chain having a first series of links having drive links and guide links and a second series of links having drive links and guide links wherein the first series and the second series are interleaved along a chain direction so that links of the second series are positioned between and extending adjacent to links of the first series. Luce further discloses the links of the first series and the links of the second series pivotally connected to one another via pins extending through apertures in each link but does not disclose said drive links defining teeth on a first side of said drive links and drive flanks on a second side opposite of said first side of said drive links. However, Kozakura et al. teaches in figures 1-3, a transmission chain comprising drive links wherein each drive link includes two teeth (t) on a first side of said drive link which define a region therebetween to accept a sprocket tooth and includes two drive flanks (not numbered) on a second side opposite said first side of drive link. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Luce in view of the teachings of Kozakura et al. to include teeth on a first side of the drive links to more securely engage the transmission chain to the sprocket and to include drive flanks

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on the drive links on a side opposite a side defining teeth so as to enable the transmission chain to drive sprockets with both a first toothed side of the chain and a second drive flanked side of the chain.

Regarding claims 11 and 12, there is reason to believe, based on the similarity of material and structure, that the functional limitation that the drive links provide uniform stiffness across the row of links may be an inherent characteristic of the reference combination set forth above. [W]here the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an inherent characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter shown to be in the prior art does not possess the characteristic relied upon. *In re Best*, 562 F.2d 1252, 195 USPQ 430, 433 (CCPA 1977). Accordingly, the burden is placed upon the applicant to prove that such a limitation is not an inherent characteristic of the reference combination.

Response to Arguments

Applicant's arguments with respect to claims 1,4,5,11, and 12 have been fully considered but they are not persuasive. The asserted deficiencies of Kozakura, namely, that Kozakura does not teach (1) that either side of a chain link may be accepted between adjacent sprocket teeth and (2) a chain link being positioned between adjacent sprocket teeth are not relied upon to modify the apparatus of Luce. The relied upon teaching of Kozakura is to modify the chain of Luce to provide teeth extending in a front direction of the chain. Additionally, Kozakura teaches a back driven sprocket in figure 1 and further teaches a chain link accepted between adjacent sprocket teeth. Furthermore, it is the combination of the disclosures of Luce and Kozakura that render the claimed invention obvious, not the references individually. Applicant cannot show non-

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obviousness by attacking references individually where the rejection is based on a combination of references. *In re Keller*, 208 USPQ 871 (CCPA 1981).

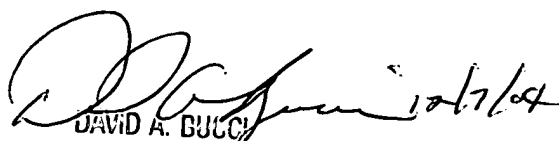
Conclusion

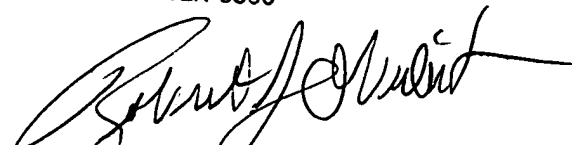
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy P McAnulty whose telephone number is 703.308.8684. The examiner can normally be reached on Monday-Friday (7:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on 703.308.3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


tpm


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SUPERVISORY PATENT EXAMINER
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